



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SPSSM INVESTMENTS VII, LP,

Plaintiff,

v.

ROMELLA GUTIERREZ, et al.,

Defendants.

NO. CV 12-7187 UA (DUTYx)

**ORDER SUMMARILY REMANDING
IMPROPERLY-REMOVED ACTION**

The Court will remand this unlawful detainer action to state court summarily because defendant Romella Gutierrez ("defendant") removed it improperly.

On August 21, 2012, defendant, having been sued in what appears to be a routine unlawful detainer action in California state court, lodged a Notice Of Removal of that action to this Court and also presented an application to proceed in forma pauperis. The Court has denied the latter application under separate cover because the action was improperly removed. To prevent the action from remaining in jurisdictional limbo, the Court issues this Order to remand the action to state court.

Plaintiff could not have brought this action in federal court in the first place, in that defendant does not competently allege facts supplying either diversity or federal-question jurisdiction, and therefore removal is improper. See 28 U.S.C. § 1441(a);¹ Exxon Mobil Corp v.

¹ 28 USC § 1441(a) provides that:

Except as otherwise expressly provided by Act of Congress, any civil action

1 Allapattah Svcs., Inc., 545 U.S. 546, 563, 125 S.Ct. 2611, 2623 (2005). As an initial matter, the
 2 state court complaint attached to the Notice of Removal asserts only a single cause of action for
 3 unlawful detainer pursuant to California Code of Civil Procedure § 1166a. (See Notice of
 4 Removal at Exh. A). Accordingly, the state court complaint discloses no federal statutory or
 5 constitutional question. See Wescom Credit Union v. Dudley, 2010 WL 4916578, at *2 (C.D. Cal.
 6 2010) (“An unlawful detainer action does not arise under federal law.”); Indymac Federal Bank,
 7 F.S.B. v. Ocampo, 2010 WL 234828, at *2 (C.D. Cal. 2010) (“No federal claim is alleged in the
 8 Complaint[]” where “[t]he Complaint contains a single cause of action for unlawful detainer.”).

9 Moreover, the Court finds unpersuasive defendant's contention that federal question
 10 jurisdiction exists because defendant filed a demurrer in state court based on plaintiff's alleged
 11 noncompliance with the notice requirements of the Protecting Tenants at Foreclosure Act, 12
 12 U.S.C. § 5220 (“PTFA”), and therefore resolution of the case “depend[s] on the determination of
 13 Defendants' rights and Plaintiff's duties under federal law.” (Notice of Removal at 2-3; see id. at
 14 Exh. B). It is well-settled that “a case may *not* be removed to federal court on the basis of a
 15 federal defense . . . even if the defense is anticipated in the plaintiff's complaint, and even if both
 16 parties concede that the federal defense is the only question truly at issue.” Caterpillar Inc. v.
 17 Williams, 482 U.S. 386, 393, 107 S.Ct. 2425, 2430 (1987) (italics in original). Nor can a
 18 counterclaim “serve as the basis for [§ 1331²] ‘arising under’ jurisdiction.” Holmes Grp., Inc. v.
 19 Vornado Air Circulation Sys., Inc., 535 U.S. 826, 830-32, 122 S.Ct. 1889, 1893-94 (2002). Thus,
 20 to the extent defendant's defenses or counterclaims to the unlawful detainer action are based on
 21 alleged violations of federal law, those allegations do not provide a basis for federal-question
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24 brought in a State court of which the district courts of the United States have
 25 original jurisdiction, may be removed by the defendant or the defendants, to
 26 the district court of the United States for the district and division embracing
 27 the place where such action is pending.

28 ² 28 U.S.C. § 1331 provides that “[t]he district courts shall have original jurisdiction of all civil
 actions arising under the Constitution, laws, or treaties of the United States.”

jurisdiction.³ See Williams v. Singh, 2012 WL 1414333, at *1 (E.D. Cal. 2012) (“there is no subject matter jurisdiction” where defendant’s removal petition states that defendant filed a demurrer in state court under the PTFA, because “such a defense cannot provide a sufficient basis to remove the action to federal court[]”); Bank of New York Mellon v. Germanelo, 2012 WL 1536543, at *2 (N.D. Cal. 2012) (no federal question jurisdiction where defendant filed a demurrer in state court based on plaintiff’s alleged noncompliance with the PTFA because “Defendant’s defenses or counterclaims to the unlawful detainer action . . . do not provide a basis for federal jurisdiction”).

Finally, even if complete diversity of citizenship exists, the amount in controversy does not exceed the diversity-jurisdiction threshold of \$75,000. See 28 U.S.C. §§ 1332,⁴ 1441(b).⁵ On the contrary, the state court complaint recites that the amount in controversy does not exceed \$10,000. (See Notice of Removal at Exh. A). Thus, because the amount in controversy is less than \$75,000, diversity jurisdiction is also lacking. See 28 U.S.C. § 1332(a); St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 291, 58 S.Ct. 586, 591 (1938) (the status of the case as disclosed by the plaintiff’s complaint is controlling for purposes of removal).

³ Even if a defense or counterclaim could give rise to federal question, the PTFA does not create a private right of action or an independent basis for federal subject matter jurisdiction. See, e.g., BDA Investment Properties LLC v. Sosa, 2011 WL 1810634, at *3 (C.D. Cal. 2011); Aurora Loan Servs. LLC v. Torres, 2011 WL 4551458, at *1 (N.D. Cal. 2011); Nativi v. Deutsch Bank Nat’l Trust Co., 2010 WL 2179885, at *2-4 (N.D. Cal. 2010).

⁴ 28 U.S.C. § 1332(a) provides that diversity jurisdiction exists only in suits between citizens of different states and “where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.”

⁵ 28 U.S.C. § 1441(b) provides that:

(1) In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.

(2) A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

1 Accordingly, IT IS ORDERED that:

2 1. This matter shall be REMANDED to the Superior Court of California, Los Angeles
3 County, North District, Michael D. Antonovich Antelope Valley Courthouse, 42011 4th Street
4 West, Lancaster, CA 93534, for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1447(c).

5 2. The Clerk shall send a certified copy of this Order to the state court.

6 3. The Clerk shall serve copies of this Order on the parties.

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8 DATED: 8/30, 2012.

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11 AUDREY B. COLLINS
12 CHIEF UNITED STATES DISTRICT JUDGE
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